all. Such words are quite often found in a consent judgment in Singapore, and cannot be construed as an admission on the part of the Respondents that they were trespassers unlawfully in occupation of the said premises. At most they amount to an admission of only the claim for possession by the Appellants and such an admission has no effect at all in a consent judgment for possession of premises which are subject to the Control of Rent Act.

In fact, at all times before the learned District Judge, the Respondents had maintained that they were the tenants of the premises, relying on the tenancy agreement dated April 26, 1952. At the request of the Appellants' solicitors, the Respondents provided the names of all the partners of their firm. According to the records, the first partner, N.M. Mohd Abdullah, has been a partner since 1938 and was a partner of the Respondent firm when the matter came up before the learned District Judge. The letting to the partnership made all the partners joint tenants: see *Ooi Hoe San* v. *Kim Teng Realty Pte. Ltd.*[2] In the circumstances, we could not see how the Respondents could have conceded that they were mere trespassers.

Mr. Kirpal Singh further relied on the fact that the consent judgment was entered on December 18, 1979 and the Respondents had been quite content to accept it and remained in possession of the said premises. No action was taken by them until September 17, 1980 when they took out the writ in the present proceedings against the Appellants. On that basis Mr. Kirpal Singh contended that the Respondents were estopped from going back on the consent judgment or asserting that the consent judgment was a nullity. In our judgment no such estoppel can arise against the Respondents. Section 14 of the Control of Rent Act is mandatory and provides that no order or judgment for recovery of possession of any premises within the meaning of the Act and comprised in a tenancy shall be made or given except in the cases set out in Part III of the Act. The consent judgment was not given pursuant to any of the cases set out in Part III of the Act and is a nullity, and no estoppel can arise which would have the effect of overriding the express provisions of the Act: see the judgment of Oliver, L.J. in *Keen* v. *Holland*[3]. Accordingly, this argument of Mr. Kirpal Singh also failed.

Appeal dismissed.

Solicitors: *Kirpal Singh & Co.; Murphy & Dumbar.*

CHAI CHEW HENG v. CHUNG SU CHON & ANOR.

[O.C.J. (Kulasekaram J.) June 14, 1984]
[Singapore – Suit No. 3396 of 1979]

Tort – Negligence – Vicarious liability of PSA – Exempt from liability – Whether liability transferrable – Damages – Port of Singapore Authority Act (Cap. 173), s. 97B – Singapore Port Regulations, 1977, regs. 83(1) & (2).

The plaintiff was employed by a company to drive their lorry No. JA 6566. The 1st defendant was the employee or servant of the 2nd defendant, the Port of Singapore Authority ("PSA"). On September 19, 1978, the plaintiff was directed by his employers to deliver a lorry load of plywood in bundles for storage pending shipment. The plaintiff's employers had booked a forklift with its driver from the PSA to unload the plywood at its premises. When the 1st defendant had unloaded three bundles from the lorry and had stacked them one on top of the other and after the forklift had moved back a little distance away from the stack consisting of the three bundles the plaintiff walked up to place a piece of wood on the floor close to the stack to assist the 1st defendant to place a fourth bundle on the top of the three bundles of the stack. While he was placing the piece of wood on the floor in front of the stack the top bundle from the stack became unstable and tumbled down hitting the plaintiff on his right hand and arm, and the right leg and foot though he tried to move away from the falling bundle. As a result of this incident the plaintiff suffered some injuries.

The plaintiff claimed damages for injuries and loss against the 1st defendant for negligence and the PSA as the master of the 1st defendant. The plaintiff entered interlocutory judgment by default of appearance against the 1st defendant and contended that the PSA was liable as the 1st defendant's negligence was not in dispute.

The PSA pleaded contributory negligence on the part of the plaintiff for putting a piece of wood at the bottom of the stack of plywood thereby causing it to fall. It also contended that as the forklift and the services of the 1st defendant were hired out to the plaintiff's employers or the exporter of the goods in question, the PSA is exempt from liability for the plaintiff's claim, having regard to regulation 83(2) of the Singapore Port Regulations, 1977.

Held: (1) regulation 83(2) is not on similar terms as section 97B of the Port of Singapore Authority Act as amended in 1971 and does not exclude the common law liability of the PSA for the plaintiff's claim, nor does it transfer any part of it on to the shoulders of the hirers of the services of the forklift and its driver who are the employers of the plaintiff or the exporter of the goods in question.

(2) regulation 83(1) makes it quite clear that the liability of the PSA is not transferred to the hirer but the hirer is required thereunder to indemnify the PSA against any such claim like the one preferred by the plaintiff.

(3) in the result the PSA is liable to the plaintiff for 50% of the damages to be assessed, with costs.

Cases referred to:

(1) *Kim Taw Electric Sawmill Co. (Pte.) Ltd.* v. *Ann Ee Siong* [1980] 2 M.L.J. 56.

(2) *Karuppan Bhoomidas* v. *Port of Singapore Authority* [1978] 1 M.L.J. 49.

CIVIL SUIT.

Y.M. Jumabhoy for the plaintiff.
Cheong Yuen Hee for the 2nd defendant.

Cur. Adv. Vult.

Kulasekaram J.: The plaintiff in this case is one Chai Chew Heng a lorry driver employed by Tan Hoe Joo, Sino-Malay Lorry Transport Sendirian Berhad, to drive their lorry No. JA6566. On September 19, 1978 the plaintiff was directed by his employers to deliver at the premises of the second defendants, the Port of Singapore Authority, (hereinafter referred to as the PSA), a lorry load of plywood which was in bundles (their dimensions being length 8 ft. x width 3½ ft. x height 2½ ft.) for storage pending shipment. For purposes of unloading the goods at the premises of the PSA the services of a forklift with its driver from the PSA had been booked by his employers. His employers had given him a document which was an approval from the PSA for the reception of these goods at Godown No. 50 of the PSA. Having arrived at the PSA premises with his lorry loaded with the plywood in question he parked his lorry a short distance from Godown No. 50 and then walked into Godown No. 50 where he showed the approval document relating to the goods to the clerk in charge there. The clerk then told him to look for a forklift driver in the godown who was then free and could assist him in the unloading of his goods with his forklift. He met one such forklift driver, the first defendant Chung Su Chon, and asked him if he could assist him to unload the goods in question from his lorry. The first defendant asked him what sort of goods he had to which he replied they were plywood in bundles. The first defendant then came out of the godown to see the goods in question in the lorry and then told him that the goods would be stored outside the godown under the eves of the godown as that portion was covered so that the goods would be sheltered from the weather. The first defendant then asked him to drive the lorry up to that position and wait there for him while he went in and fetched his forklift. The first defendant came back with his forklift No. 637 and proceeded to unload the bundles of plywood from the lorry and had them stacked up at the place he had indicated earlier. The plaintiff did not direct the first defendant as to how or where he was to stack these bundles of plywood. He however assisted the first defendant in the unloading and the stacking of the bundles. When the first defendant had unloaded three bundles from the lorry and had stacked them one on top of the other and after the forklift had moved back a little distance away from the stack consisting of the three bundles the plaintiff walked up to place a piece of wood on the floor close to the stack to assist the first defendant to place a fourth bundle on the top of the three bundles of the stack. While he was placing the piece of wood on the floor in front of the stack the top bundle from the stack became unstable and tumbled down hitting the plaintiff on his right hand and arm, and the right leg and foot though he tried to move away from the falling bundle. As a result of this incident the plaintiff suffered some injuries to his right arm and hand, and his right leg and foot. He was removed to the Singapore General Hospital by ambulance and his injuries attended to.

The plaintiff now claims damages for the injuries and loss he has suffered as a result of the first defendant's negligence in the manner he had stacked the three bundles one on top of the other which caused the top bundle to tumble over and hit him, from the first defendant and the PSA as the master of the first defendant.

All what I have stated above is not in dispute between the parties. If there were minor disputes on any of those facts then on the evidence before me I find what I have stated above as the facts here. There were also other facts which have been agreed between the parties as set out in Exhibit A. It is also not in dispute that as the first defendant had failed to enter an appearance interlocutory judgment by default had been entered against him on the claim.

It was submitted by the plaintiff that as the first defendant's negligence is no longer in dispute, *prima facie*, the PSA is liable as on its own admission the first defendant at the material time was their employee or servant. The second defendant's counsel submitted that while they admitted that the first defendant had been negligent in the manner in which he did his work that morning they had also pleaded in their defence that the plaintiff had also been liable of contributory negligence by putting a piece of wood at the bottom of the stack of plywood thereby causing the top bundle to fall. The agreed facts showed that the

parties admitted negligence on the part of the first defendant but there was no clear admission as to what caused the top bundle to fall from the stack. The evidence placed before me including the admissions showed that while the first defendant had stacked the three bundles one on top of the other in such a manner which was admittedly negligent, however that by itself did not cause the top bundle to topple down. The evidence showed that the top bundle toppled down as the plaintiff was placing a piece of wood on the floor at bottom of the stack. It is reasonable to infer, in the absence of any additional fact, that the plaintiff while placing the piece of wood at the bottom of the stack negligently touched or in some other way negligently knocked the stack which was the immediate cause for the top bundle to roll down and hit the plaintiff. It was urged on behalf of the PSA by their counsel that I should follow the decision of the Court of Appeal in the case of *Kim Taw Electric Sawmill Co. (Pte.) Ltd.* v. *Ann Ee Siong*,[1] where under almost similar circumstances the blame was equally apportioned between the plaintiff and the defendants. I agree with that submission and find the plaintiff and the PSA are equally to blame for this accident that caused the plaintiff's injuries. The liability of the second defendant for the plaintiff's claim would be 50% of the damages to be assessed by the Registrar, for the injuries and loss that the plaintiff suffered here. Finally it was alleged and submitted by counsel for the PSA that as the forklift with the services of its driver the first defendant were hired out to the plaintiff's employer or the exporter of the goods in question, having regard to Regulation 83(2) of the Singapore Port Regulations, 1977, (hereinafter referred to as the said Regulations) which reads:

"The Authority shall be exempt from all liability for any injury, loss or damage arising either directly or indirectly from the hire of such vehicle or equipment."

the PSA is exempt from liability for the plaintiff's claim.

For clearly understanding and construing Regulation 83(2) of the said Regulations it would be convenient to look at the provisions of Regulation 83(1) which reads:

"Any person who hires any crane, forklift or other vehicle or equipment from the Authority shall notwithstanding that the same be driven or operated by the servant or agent of the Authority be liable for any injury, loss or damage caused by the vehicle or equipment and such person shall indemnify the Authority in respect of any claim thereof if such claim is preferred against the Authority by any person on that account."

In the case of *Karuppan Bhoomidas* v. *Port of Singapore Authority*,[2] where the PSA was sued for loss and damage suffered by a member of a stevedoring gang in the regular employment of the PSA for injuries received while loading a cargo of planks from the wharf side at the PSA into the hold of a ship the members of that stevedoring gang were hired out to the shipowners for the purpose of loading its cargo on to the ship by the PSA. There the PSA denied liability and they relied on By-law 26 which reads as follows:

"the serangs and labourers employed in discharging and loading vessels be under the superintendence of the ship's officers; the Board undertake no responsibility as stevedores."

In the By-law the "Board" refers to the "Singapore Harbour Board" which is the predecessor of the PSA.

Lord Salmon delivering the decision of the Privy Council in that case at page 51 said:

"Had it been the intention of By-law 26 to shift the *prima facie* responsibility of the respondent for the negligence of servants engaged and paid by them on to the shoulders of the shipowners, nothing would have been easier than to do so in plain words. This indeed was done in section 97B of the Port of Singapore Authority Act as amended in 1971 – which is strikingly different from By-law 26. That section reads as follows:

> "Any stevedore or workman whilst engaged in performing work in or in respect of any vessel shall, notwithstanding that his wage or remuneration for performing the said work is paid by the Authority, be deemed to be the servant of the owner and master of such vessel and the Authority shall be exempt from all liability for any loss or damage caused by any act, omission or default of such stevedore or workman."

Their Lordships do not consider that By-law 26 is of any assistance to the respondent which is being sued in its capacity as an employer. The action is brought by the representative of one of its deceased servants in respect of the negligence of the deceased's fellow servants for which the respondent is vicariously liable. Its liability for the negligence of its servants does not spring from any undertaking it has given. It is imposed upon the respondent by the common law. In their Lordships' view, By-law 26 does not exclude that liability, nor transfer any part of it on to the shoulders of the shipowners."

In our case Regulation 83(2) is not on similar terms as section 97B of the Port of Singapore Authority Act as amended in 1971 and quoted above and does not exclude the common law liability of the PSA for the plaintiff's claim here nor does it transfer any part of it on to the shoulders of the hirers of the services of the forklift and its driver

who here are the employers of the plaintiff or the exporter of the goods in question.

Regulation 83(1) makes it quite clear that the liability of the PSA is not transferred to the hirer but the hirer is required thereunder to indemnify the PSA against any such claim like the one preferred by the plaintiff. For these reasons I rule against the PSA on this submission by their counsel. In the result the PSA shall be liable for 50% of the damages to be assessed by the Registrar to the plaintiff for the loss and damages suffered by him here. The PSA shall also be liable for the costs of this action to the plaintiff.

Claim allowed.

Solicitors: *Y.M. Jumabhoy & Co.; Chan, Soh & Co.*

KARTING CLUB OF SINGAPORE v. DAVID MAK & ORS.

[O.C.J. (Chua J.) September 19, 1984]

[Singapore – Origination Summons No. 146 of 1984]

Societies – Unincorporated member club – Capacity to sue or be sued – Automatic retirement from General Committee – Expulsion – Co-opting of Committee member – Validity – Payment of costs personally.

The main issue in this case is whether the Karting Club of Singapore, being an unincorporated member club, can be the plaintiff in this action. The Club sought *inter alia*, a declaration that under the provisions of Rule 8 of the Constitution and Rules of the Club, the defendants were deemed to have automatically retired from being officers and/or General Committee members of the Club.

Between October 1983 and January 1984 no General Committee meetings had been convened to attend to the affairs of the Club. The Chairman of the Club convened a meeting on February 5, 1984 in which one General Committee member was present. At this meeting "it was deemed that the defendants were automatically retired from the General Committee" and three persons were co-opted to fill certain vacancies. The defendants maintained that they were members of the General Committee and had not instructed certain solicitors to act for the Club. The defendants' contentions are (1) that there is no evidence that the defendants failed to attend three consecutive meetings of the General Committee called by the Chairman or the Secretary and (2) that the present General Committee is not properly constituted and therefore has no authority to bring this action.

Held: (1) an unincorporated member club, not being a partnership or legal entity, cannot sue or be sued in the name of the club. The Karting Club of Singapore is unincorporated and consequently cannot be made a plaintiff to this action;

(2) there is no evidence that notice of the calling of the meeting of February 5, 1984 was served on any of the defendants. The defendants had not breached Rule 8 and their expulsion from the General Committee was invalid. Consequently the purported appointment of the three members into the General Committee on February 5, 1984 was inoperative;

(3) the Originating Summons must be dismissed with costs. As the action was initiated by the Chairman in the name of the Club he must personally pay the costs of the defendants.

Case referred to:

(1) *London Association for Protection of Trade* v. *Greenlands, Ltd.* [1916] 2 A.C. 15.

ORIGINATING SUMMONS.

P. Suppiah for the plaintiff.

Miss Wong Juan Swee for the defendants.

Cur. Adv. Vult.

Chua J.: The plaintiff, The Karting Club of Singapore, by this Originating Summons, seeks –

(a) A declaration that under the provisions of Rule 8 of the Constitution and Rules of the Club the defendants, David Mak (Honorary Secretary), George Tan (Honorary Treasurer), Maisie Teo (General Committee Member) and Richard Teo (General Committee Member), are deemed to have automatically retired from being officers and/or General Committee Members of the Club;

(b) An order that the defendants forthwith deliver up to the Club, *inter alia*, all account books, receipt books and all payment vouchers of the Club;

(c) An account of monies expended by the defendants on behalf of the Club;

(d) An injunction restraining the defendants from representing that they are still members of the General Committee of the Club.

The Club is a duly constituted member Club registered with the Registrar of Societies.

The Chairman of the Club is Anthony Wee Soon Kim (A.S.K. Wee) and he with all the defendants and Dennis Kwok formed the General Committee.

It is not in dispute that between October 1983 and January 1984 no General Committee meetings